

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.1659 of 2019
and
W.M.P.No.1859 of 2019

K.Chandrasekaran

... Petitioner

Vs.

1.The District Collector
Erode District
Erode.

2.The Revenue Divisional Officer
Erode.

3.The Tahsildar
Kodumudi Taluk
Erode District.

4.The Block Development Officer
Kodumudi Panchayat Union
Kodumudi
Erode District.

5.M.Sivakami

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to forbear the 4th respondent from disbursing the monetary benefits of the deceased Murugesan who was working as Noon Meal Organiser in Noon Meal Centre at Panchayat Union Elementary School, Perumalkovilpudur in Kodumudi Block to the 5th respondent till the disposal of the suit in O.S.No.682 of 2018 on the file of Sub-Court, Erode.

For Petitioner : Mr.P.P.Shanmugasundaram

For Respondents : Mr.R.S.Selvam, Government Advocate
for R1 to R3
Mr.E.Balamurugan Special Government
Pleader for R4
Mr.C.S.Saravanan for R5

O R D E R

Writ Petition is filed for issuance of Writ of Mandamus, to forbear the 4th respondent from disbursing the monetary benefits of the deceased Murugesan, who was working as Noon Meal Organiser in Noon Meal Centre at Panchayat Union Elementary School, Perumalkovilpudur in Kodumudi Block, to the 5th respondent till the disposal of the suit in O.S.No.682 of 2018 on the file of Sub-Court, Erode.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for respondents 1 to 3 and the learned Special Government Pleader appearing for the 4th respondent. By consent, the writ petition is taken up for final disposal.

3. The case of the petitioner is that one Kulandasamy, who owned various properties, died intestate on 22.02.2011 leaving behind his only son K.Murugesan as his legal heir to succeed his estate. Except the said Murugesan, he has no other children. The wife of the said Kulandasamy viz., Pongiammal predeceased him on 06.05.2007, thereby the said Murugesan got absolute right over the said properties. The said Murugesan was working as Noon Meal Organiser in Noon Meal Centre at Panchayat Union Elementary School, Perumalkovilpudur in Kodumudi Block. The said Murugesan, who is the uncle of the petitioner, during his life time also executed a Will dated 29.05.2013 bequeathing his entire properties, referred above, and died on 14.07.2014 while in service without marriage and issues. The deceased Murugesan had no sisters and brothers.

4. While things stood thus, one Muthukumar who is the petitioner's adjacent land owner, often interfered with his peaceful possession and enjoyment of the said properties, and, therefore, the petitioner filed a suit in O.S.No.173 of 2015 for declaration, declaring the petitioner as the absolute owner of the suit properties and consequential permanent injunction restraining the said Muthukumar from interfering with his possession and enjoyment of the suit properties and on 28.01.2016 the suit was decreed exparte.

5. The petitioner has applied to the 3rd respondent to issue legal heir certificate to the effect that he is the legal heir of the said deceased Murugesan. However, the 3rd respondent by his memorandum dated 08.02.2016, rejected the petitioner's claim stating that the wife of the deceased Murugesan viz., Sivakami is alive. On 23.01.2018, the petitioner submitted a representation to the 4th respondent requesting to disburse all the monetary benefits due to the demise of the said Murugesan who nominated the petitioner to receive all such benefits

through his Will dated 29.05.2013 and also enclosing necessary documents in support of the same. Thereafter, the 4th respondent sought clarification from the 1st respondent on his representation. The 1st respondent by his memorandum dated 12.03.2018 sent his clarification, which was forwarded to the petitioner by the 4th respondent by his letter dated 04.04.2018 and the same was received by the petitioner on 26.04.2018. The 5th respondent claiming to be the legally wedded wife of the deceased Murugesan obtained legal heir certificate dated 10.07.2018 from the Tahsildar, Kodumudi by false representation and claimed the said benefits. Even in the family card of the said Murugesan, the name of the 5th respondent did not find a place. Thereafter, she filed a suit on 12.10.2018 in O.S No.682 of 2018 on the file of the Sub-Court, Erode arraying the petitioner, his mother and the said Muthukumar as defendants seeking to declare herself as the absolute owner of the suit properties and directing them to deliver vacant possession of the properties and other reliefs, which is pending as on date. Therefore, the petitioner made a representation on 12.11.2018, to the 1st and 2nd respondents to take steps to cancel the legal heir certificate issued in favour of the 5th respondent by the Tahsildar, Kodumudi, for which no reply has been received till date. Hence the present Writ Petition is filed not to disburse the monetary benefits of the said deceased Murugesan in favour of the 5th respondent, contrary to the Will executed by the said Murugesan.

4. The learned counsel for the petitioner submitted that already, the said Murugesan executed a Will in favour of the petitioner and conveyed the properties, including the retirement benefits, however, the 3rd respondent, inadvertently granted legal heir certificate in favour of the 5th respondent, on the strength of which, the 5th respondent is trying to secure the terminal benefits from the official respondents.

5. However, the learned counsel for the petitioner fairly conceded that the suit was filed by the 5th respondent in respect of the properties and not in respect of the terminal benefits.

6. The learned counsel for the 5th respondent submitted that the 5th respondent is the legally wedded wife and she is entitled to all the terminal benefits including the properties owned by her husband.

7. The learned Special Government Pleader appearing for the 4th respondent filed a counter in which paragraph 4 reads as follows:

4. With regard to the averments made para 2 & 3 of the affidavit, it is humbly submitted that the

petitioner has to prove the absolute owner of the property. It is true that one Mr.Murugesan was working as Noon Meal Organiser in Noon Meal Centre at Panchayat Union Elementary School, Perumlkovilpudur in Koodumudi Block and he was died on 14.07.2014 which in service leaving behind his legally wedded wife, the 5th respondent herein Tmt.M.Sivakami and she obtained legal heir certificate from the Tahsildar, Kodumudi dated 10.07.2018.

8. Considering the facts and circumstances of the case, more particularly the fact that the 3rd respondent has issued a legal heir certificate in favour of the 5th respondent, on the strength of which, the 5th respondent is entitled to receive the terminal benefits belonging to the deceased Murugesan and that the suit has nothing to do with the settlement of the terminal benefits, I am not inclined to entertain the writ petition filed by the petitioner and the relief sought for by the petitioner cannot be granted.

9. Accordingly, this Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

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To

Sub Assistant Registrar

- 1.The District Collector
Erode District, Erode.
- 2.The Revenue Divisional Officer
Erode.
- 3.The Tahsildar
Kodumudi Taluk, Erode District.
- 4.The Block Development Officer
Kodumudi Panchayat Union
Kodumudi, Erode District

+1 cc to Mr.P.P.Shanmugasundaram, Advocate, S.R.No.82067
+1 cc to Mr.C.S.Saravanan, Advocate, S.R.No.82385
+1 cc to the Government Pleader, S.R.No.82810

W.P.No.1659 of 2019 and
W.M.P.No.1859 of 2019

SS (CO)
SSM(04/11/2019)